

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Iwamura, Keiichi)	Confirmation No.:	9938
)		
Serial No.:	10/759,364)	Art Unit:	2134
)		
Filed:	January 16, 2004)	Examiner:	Wyszynski, Aubrey H.
)		
For:	IMAGE PROCESSOR, METHOD)		
	THEREOF, COMPUTER)		
	PROGRAM, AND COMPUTER)		
	READABLE STORAGE MEDIUM)		
)		

RENEWED PETITION TO WITHDRAW HOLDING OF ABANDONMENT

BASED ON FAILURE TO RECEIVE OFFICE ACTION UNDER 37 C.F.R. § 1.181
(INCLUDING SUPPLEMENTED STATEMENT OF FACTS & MASTER DOCKET)

Mail Stop TC2100
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir/Madam:

Responsive to correspondence mailed December 4, 2008 from the U.S.P.T.O. notifying Petitioner (or Applicant) of dismissal of the Petition to Withdraw Holding of Abandonment Notice of Abandonment previously filed by Petitioner on November 11, 2008, Petitioner respectfully requests the Petitions Attorney of record to reconsider this Renewed Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action under 37 C.F.R. § 1.181(a) and in accordance with MPEP Section 711.03(c) in view of the following:

Supplemented Statement of Facts in Support of Renewed Petition begins on page 2 of this paper;

Remarks begin on page 5 of this paper; and

Master Docket Records Attachment is separately attached.

SUPPLEMENTED STATEMENT OF FACTS
IN SUPPORT OF RENEWED PETITION

A. Before *unexpectedly* receiving a Notice of Abandonment from the U.S.P.T.O on October 31, 2008 (mailed from U.S.P.T.O. on October 28, 2008), *the last official U.S.P.T.O. communication received by Petitioner's Representative was a non-final Office Action received on January 3, 2008 (mailed from U.S.P.T.O. on December 28, 2007)*.

B. Before filing the first Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action on November 10, 2008, the Petitioner's last official action pertaining to the subject application was taken on May 23, 2008 when a Response, including a Petition for Extension of Time (two months), was filed before the extended due date of May 31, 2008, thereby preserving pendency.

C. According to PAIR, *apparently* a Notice of Allowance was sent to the Petitioner's Representative on July 30, 2008 from the U.S.P.T.O., *however, apparent Notice of Allowance was never received at the Petitioner's Representative's mailing address.*

D. After receipt of the notice of dismissal of the first Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action on December 9, 2008, Petitioner attempted to contact the Petition Attorney of Record in order to discuss the subject dismissal on December 11 and 15, 2008, leaving voice mail messages. On December 16, Petitioner's Representative and Office of Petitions Attorney Kenya A. McLaughlin were able to hold a brief discussion regarding the reasons for the aforementioned dismissal.

E. The Petitioner's Representative's utilize current and up-to-date 2007 ProLaw Docketing software (Version 11.10.0.0) as their primary docketing system. Currently, Petitioner's Representative's receive all correspondence from the U.S.P.T.O.

via standard U.S. postal mail services. Once the correspondence is received at the Petitioner's Representative's address, 15975 Alton Parkway, Irvine, CA 92618-3371, the received correspondence is docketed typically within 24 hours. The docketing procedure includes recording, *inter alia*, the application number, attorney docket number, event type, mail date (or "event" date) of the office action, and any statutory due dates required to be met by the Petitioner.

F. A search of the Petitioner's records and docket (including the Master Docket), and file jacket including application contents, indicates that the aforementioned Notice of Allowance had not been received by the Applicant's Representative. Referring to the Master Docket Exhibit (see separately attached), Applicant's Representative's docketing system does not reflect any entry regarding official receipt of the subject Notice of Allowance which was apparently sent to Applicant's Representative on July 30, 2008. That is to say, beginning with event date July 30, 2008, which is the date the supposed Notice of Allowance was mailed from the U.S.P.T.O., through October 30, 2008, which was the last day to pay the issue fee, there were no instances of any records being received which pertained to the subject application, except for the Notice of Abandonment mailed on October 28, 2008 (see Master Docket Exhibit; page 27; third entry from bottom). Accordingly, the Master Docket Exhibit has been produced as evidence which shows "all replies docketed for the three months from the mail date of the nonreceived Office action".

G. Regarding the aforementioned Notice of Abandonment mailed on October 28, 2008, Petitioner's Representative notes that the Notice of Abandonment was actually prematurely sent three days before the actual date of abandonment occurred, that being October 31, 2008. Further, Petitioner's Representative notes that, although there is no requirement on the P.T.O.'s part to provide a "courtesy call" to the Petitioner regarding the upcoming potential of abandonment of an allowed application; Petitioner's Representative did not receive such a so-called courtesy call. Accordingly, it appears the Examiner handling the subject application prematurely rushed the abandonment through

the P.T.O. system to dispose of the case, even when the case, technically was still pending.

H. Petitioner has never had any intention of abandoning the subject application and has made an effort to prosecute the subject application within the allotted time constraints set forth by the U.S.P.T.O. Furthermore, Petitioner has made every effort to expeditiously remediate the aforementioned abandonment.

REMARKS

Petitioner respectfully submits that the aforementioned Renewed Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action, filed under 37 C.F.R. § 1.181 and in accordance with MPEP 711.03(c), be upheld by the U.S.P.T.O. Office of Petitions.

As has been discussed, Petitioner never received the Notice of Allowance supposedly mailed from the U.S.P.T.O. on July 30, 2008. Furthermore, Petitioner has never had any intention of abandoning the subject application, especially, since the case had been allowed. Moreover, sufficient evidence has been effectively produced proving that the Petitioner's Representative's docketing system is sufficiently reliable.

It is believed no fee is required pertaining to a petition filed under 37 C.F.R. § 1.181 and in accordance with MPEP 711.03(c). However, if any additional fee is required, please charge Deposit Account No. 502456.

Should there be any questions or comments, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,

/ Michael D. Nornberg /

Date: _____

By: _____

Michael D. Nornberg
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